

AMENDATORY SECTION (Amending Order 00-05-068, filed 2/15/00, effective 3/17/00)

WAC 192-300-050 Predecessor-successor relationship defined. This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(1) **Predecessor.** You are a "predecessor" if, during any calendar year, you transfer any of the following to another individual or organization:

- (a) All, or a portion, of your operating assets as defined in subsection (3) below; or
- (b) A separate unit or branch of your trade or business.

(2) **Successor.** You are a "successor" if, during any calendar year, you acquire substantially all of a predecessor employer's operating assets. You are a "partial successor" if, during any calendar year, you acquire:

- (a) A portion of a predecessor employer's operating assets, or
- (b) A separate unit or branch of a predecessor employer's trade or business.

(3) **Operating assets.** "Operating assets" include the properties you use in the normal course of business operations to generate your operating income. They may include properties that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, or goodwill. Employees are not operating assets.

(4) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (5) below.

(5) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that occurred as a result of the business acquisition or reorganization, beginning when the acquisition started and ending when the primary entity is transferred.

(6) **Exceptions.** A predecessor-successor relationship will not exist:

- (a) For the purposes of chapter 50.24 RCW (payment of taxes), when the property is acquired through court proceedings, including bankruptcies, to enforce a lien, security interest, judgment, or repossession under a security agreement unless the court specifies otherwise;
- (b) For the purposes of chapter 50.29 RCW (experience rating), when any four consecutive quarters, one of which includes the acquisition date, pass without reportable employment by either the predecessor, successor, or a combination of both.

AMENDATORY SECTION (Amending Order 98-14-068, filed 6/30/98, effective 7/31/98)

WAC 192-310-010 Employer reports--RCW 50.12.070. (1) **Master application.** Every person or entity, which has one or more individuals performing services for it in the state of Washington, must file a master application with the department (~~(a master application)~~) in a format prescribed by the commissioner.

(2) **Quarterly tax and wage reports:**

(a) **Tax report.** Each employer must file a quarterly tax report with the commissioner listing the total wages paid to all individuals in its employ during that calendar quarter.

(b) Report of employee's wages. Each employer must file a quarterly report of employee's wages with the commissioner. This report must list each employee by name, social security number, hours worked, and wages paid during that calendar quarter.

(c) Format. The quarterly tax and wage reports must be filed in ~~((a))~~ one of the following formats ~~((prescribed by the commissioner.))~~:

(i) Electronically, using the current version of UIFastTax, UIWebTax, or ICESA Washington; or

(ii) Paper forms supplied by the department (or a certified version of those forms).

(d) Due dates. The ~~((y))~~ quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. Therefore, reports are due by April 30, July 31, October 31, and January 31, respectively. Exceptions to the time and manner of filing the report must be approved in advance by the commissioner.

~~((d))~~ e Termination of business. Each employer who ceases business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due to the date such account is closed;

(ii) A report of employee's wages for the current calendar quarter which includes all wages paid to the date such account is closed.

~~((3))~~ Report form instructions. All form preparation instructions issued by the employment security department have the same force and effect as if they had been incorporated into this regulation.))

AMENDATORY SECTION (Amending Order 98-14-068, filed 6/30/98, effective 7/31/98)

WAC 192-310-025 Application of payments. (1) A payment received with a tax report will be applied to the quarter for which the report is filed. A payment exceeding the legal fees, penalties, interests and taxes due for that quarter will be applied to any other debt as provided in subsection (2). If no debt exists, a credit statement will be issued for any overpayments.

(2) A payment received without a tax report will be applied in the following order of priority, beginning with the oldest quarter:

(a) ~~((Lien fees))~~ Costs of audit and collection.

(b) ~~((Warrant fees))~~ Penalties for willful misrepresentation of payroll.

(c) ~~((Late tax report penalty))~~ Lien fees.

(d) ~~((Late tax payment penalty))~~ Warrant fees.

(e) ~~((Interest charges))~~ Late tax report penalty.

(f) ~~((Tax payments))~~ Penalties for incomplete reporting or reporting using incorrect format.

(g) Late tax payment penalty.

(h) Interest charges.

(i) Tax payments.

AMENDATORY SECTION (Amending Order 98-14-068, filed 6/30/98, effective 7/31/98)

WAC 192-310-030 Reports and tax payments subject to penalty. (1) ~~Late~~ ~~((T))~~ **tax reports.** An employer who files a ~~((late or incomplete))~~ tax report as described in WAC 192-310-010 (2)(a) but does not file it within the time frame prescribed in WAC 192-310-010(2)(c) is subject to a penalty of ~~((ten))~~ twenty-five dollars per violation, unless the penalty is waived by the department.

(2) Incomplete Tax Reports. An employer is required to file the report required by WAC 192-310-010 in a complete manner and in the format required by the commissioner.

(a) An "incomplete report" is defined as any report submitted by either a contributory or reimbursable employer where:

- (i) The entire wage report is not submitted timely; or
- (ii) A required element is not reported (social security number, name, hours worked, or wages paid); or
- (iii) A significant number of employees are not reported; or
- (iv) A significant number of any given element is not reported such as, but not limited to, missing social security numbers, names, hours, wages; or
- (v) No employer reference number or Unified Business Identifier (UBI) number is included with the tax or wage report.

~~((b))~~ (b) An "incorrect format" means any report that is not submitted in the format required by the commissioner under WAC 192-310-010(c).

(3) Penalty for filing an incomplete or incorrect format tax report. An employer who fails to file a report required by RCW 50.12.070 is subject to penalty as follows:

(a) Incomplete tax report. The penalty for filing an incomplete tax report will be two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less. When no quarterly tax is due and an employer has submitted an incomplete report, the following schedule will apply:

<u>(i)</u>	<u>1st Occurrence</u>	<u>\$ 75.00</u>
<u>(ii)</u>	<u>2nd Occurrence</u>	<u>\$150.00</u>
<u>(iii)</u>	<u>3rd and subsequent occurrences</u>	<u>\$250.00</u>

(b) Filing tax report in an incorrect format. The penalty for filing a tax report in an incorrect format will be two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less. When no quarterly tax is due and an employer has submitted a tax report in an incorrect format, the following schedule will apply:

<u>(i)</u>	<u>1st Occurrence</u>	<u>\$150.00</u>
<u>(ii)</u>	<u>2nd and subsequent occurrences</u>	<u>\$250.00</u>

(4) Knowingly misrepresenting amount of payroll. If an employer knowingly misrepresents to the department the amount of his or her payroll, upon which contributions under this title are based, the employer is liable for a penalty of ten times the difference between the contributions paid, if any, and the amount of contributions the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer is also liable to the department for the reasonable expenses of auditing his or her books and collecting such sums as provided in WAC 192-340-100.

~~((2-))~~ **(5) Report of employee's wages.** Any decision to assess a penalty for filing a late or incomplete report of employee's wages as described in WAC 192-310-010 (2)(b) will be made

on an individual basis by the chief administrative officer of the tax branch as provided in RCW 50.12.220.

~~((3))~~**(6) Delinquent tax payments.** For purposes of RCW 50.12.220, tax payments are delinquent as provided in WAC 192-310-020 and RCW 1.12.070.

~~((4))~~**Late penalty.** For tax payments due on wages paid, a minimum \$10.00 penalty will be assessed for late payments.

~~((5))~~**(7) Penalty waivers.** The department may, for good cause, waive penalties in the following situations:

- (a) The return was filed on time but inadvertently mailed to another agency;
- (b) The delinquency was due to an action of an employee of the department, such as providing incorrect information to the employer when the source can be identified, or not furnishing proper forms to permit the filing of tax reports or the payment of taxes on time;
- (c) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;
- (d) The delinquency was caused by the accidental destruction of the employer's place of business or business records; or
- (e) The department finds the employer to be out of compliance during an employer-requested audit, but the department determines the employer made a good faith effort to comply with all applicable laws and rules.

~~((6))~~**(8) Waiver requests.** A request for a waiver of penalties must be written, contain all pertinent facts, be accompanied by available proof, and be filed through a tax office. In all cases the burden of proving the facts is on the employer.

~~((7))~~**(9) Extensions.** The department, for good cause, may extend the due date for filing a report. The employer must make a deposit with the department in an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit will be credited to the employer's account and applied to the employer's debt. The amount of the deposit is subject to approval by the department.

AMENDATORY SECTION (Amending Order 00-05-069, filed 2/15/00, effective 3/17/00)

WAC 192-320-070 Conditions for relief of benefit charges due to a voluntary quit. (1) For claims with an effective date prior to January 4, 2004, ((A))a contribution-paying non-local government base year employer, who has not been granted relief of charges under RCW 50.20.020(2) may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.020(4((3))) and WAC 192-320-065.

(2) For claims with an effective date on or after January 4, 2004, a contribution-paying non-local government base year employer, who has not been granted relief of charges under RCW 50.20.021(3), may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.021(4) and WAC 192-320-065.

(3((4))) Reasons for a voluntary quit not attributable to the employer. A claimant may have been denied unemployment benefits for voluntarily quitting work without good cause, but subsequently requalify for unemployment benefits through work and earnings. Even if the claimant has requalified for benefits, the following reasons for leaving work will be considered

reasons not attributable to the employer(~~(-may include, but are not limited to)~~):

- (a) The claimant's illness or disability or the illness, disability or death of a member(s) of the claimant's immediate family;
- (b) The claimant's domestic responsibilities;
- (c) Accepting a job with another employer;
- (d) Relocating for a spouse's employment;
- (e) Starting or resuming school or training;
- (f) Being in jail;
- (g) The distance to the job site when the job was accepted and the distance at the time of the quit remained the same, or the job location may have changed; but the distance traveled or difficulty of travel was not increased;
- (h) Being dissatisfied with wages, hours or other working conditions generally known when the job was accepted; and the working conditions are determined suitable for the occupation in the claimant's labor market.

(4((2))) Reasons for a voluntary quit considered attributable to employer are those work-related factors of such a compelling nature as to cause a reasonably prudent person to leave employment. The work factors must have been reported to the employer if the employer has reasons not to be aware of the conditions, and the employer failed to improve the factors within a reasonable period of time. The reason for quitting may or may not have been determined good cause for voluntarily leaving work under RCW 50.20.050. For benefit charging purposes, however, ((S))such work-related factors may include, but are not limited to:

- (a) Change in work location which causes an increase in distance and/or difficulty of travel, but only if it is clearly greater than is customary for workers in the individual's classification and labor market;
- (b) Deterioration of work site safety provided the employee has reported such safety deterioration to the employer; and the employer has failed to correct the hazards within a reasonable period of time;
- (c) Employee skills no longer required for the job;
- (d) Unreasonable hardship on the health or morals of the employee;
- (e) Reductions in hours;
- (f) Reduction in pay;
- (g) Notification of impending layoff; and
- (h) Such other work-related factors as the commissioner may deem pertinent.

NEW SECTION

WAC 192-320-075 Charges to the separating employer—RCW 50.29.021(2)(c). (1) If a claimant voluntarily quits work to accept a job with a new employer, 100% of benefits paid on the claim will be charged to the new employer when this new employer is the claimant's last employer, a base period employer, and a contribution-paying employer.

(2) If a claimant quits work because of the working conditions listed in this subsection, the employer from whom the separation occurred will be charged for 100% of benefits paid on the claim if the employer is the claimant's last employer, a base period employer, and a contribution-paying employer. These working conditions include:

- (a) A reduction in the individual's usual compensation of 25% or more under WAC 192-150-115;
 - (b) A reduction in the individual's usual hours of 25% or more under WAC 192-150-120;
 - (c) A change in the work location which caused a substantial increase in distance or difficulty of travel under WAC 192-150-125;
 - (d) A deterioration in the individual's worksite safety under WAC 192-150-130;
 - (e) Illegal activities in the individual's worksite under WAC 192-150-135; or
 - (f) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs under WAC 192-150-140.
- (3) Benefits based on wages paid by the following entities will **not** be charged to the experience-rating account of the separating employer as described in subsections (1) and (2) if they were earned:
- (a) In another state;
 - (b) From a local government employer;
 - (b) From the federal government; or
 - (c) From any branch of the United States military.

NEW SECTION

WAC 192-340-100 Reasonable audit expenses—RCW 50.12.220(1)(b). Reasonable expenses for auditing an employer's books and collecting taxes may include:

- (1) Salaries and benefits based on the payrolls documented for state staff conducting the audit (including reporting and follow-up costs);
- (2) Communication costs such as telephone charges for arranging the audit, e-mails, mail or similar communication services;
- (3) Travel costs for expenses such as transportation, lodging, subsistence and related items incurred by state employees traveling for the purpose of conducting the audit. Such costs may be charged on an actual cost basis or on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed by the department;
- (4) Customary standard commercial airfare costs (coach or equivalent);
- (5) Costs for materials and supplies (including the costs of producing reports and audit findings);
- (6) Equipment costs necessary for conducting the audit;
- (7) Collection costs, including court costs, lien and warrant fees, and related costs; and
- (8) Other costs which the department establishes that are directly related to the audit or collection of the penalty (i.e. appeal costs).